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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

EDWIN F. DAVID, Plaintiff and Appellant, v. THE CITY OF LOS ANGELES, et al. Defendants and Respondents.	B168347 (Los Angeles County Super. Ct. No. BC277737)

Appeal from a judgment of the Superior Court of Los Angeles County, Malcolm H. Mackey, Judge. Affirmed.

William A. Kent for Plaintiff and Appellant.

Rockard J. Delgadillo, City Attorney, Michael L. Claessens, Assistant City Attorney, Robert Cramer, Assistant City Attorney for Defendants and Respondents.

INTRODUCTION

Defendant and respondent City of Los Angeles towed plaintiff and appellant Edwin David's (David) car. The same day his car was towed, David paid the impound fee to redeem his car and requested a hearing. Notwithstanding California Vehicle Code section 22852, which requires a posttow hearing to be held within 48 hours of a request for a hearing, the City held the hearing 27 days after the request. David filed a second amended complaint on behalf of himself and similarly situated individuals in which he stated various causes of action for equitable and monetary relief arising out of alleged violations of the California Constitution against the City of Los Angeles, the "Head of Department of Transportation, City of Los Angeles," and the "Chief of Police, City of Los Angeles" (collectively the City). The trial court sustained the City's demurrer without leave to amend as to all causes of action. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The City tows David's car.

The City towed David's car on August 13, 1998 because it was in a no parking zone. On the same day his car was towed, David paid $134.50 to redeem his car and he requested an immediate hearing. The hearing, however, was not held until 27 days later on September 9, 1998. Under Vehicle Code section 22852, subdivision (c), a poststorage hearing shall be held within 48 hours after a request for a hearing is made, and the public agency may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who directed the storage of the vehicle. The hearing officer in this action, who was a full-time employee of the City, ruled against David and found there was probable cause for the tow, although the finding was based solely on the hearsay narrative report of the tow officer, who was not present at the hearing. The

hearing officer told David he could file a claim with the city clerk if he was dissatisfied with the result.[1]

On October 13 or 22, 1998, David filed a claim for damages with the city clerk's office, and he received a letter denying his claim on January 12, 1999. Neither the claim David filed nor the denial of his claim are attached to his pleadings or otherwise made a part of the record.

David files an action in federal court.

After the City denied David's claim, he filed an action against the City in federal court on May 28, 1999. David's federal complaint contained two counts. The first count was brought under Title 42 United States Code section 1983. In the second count, David alleged the "towing and storage charges charged by the City official impound stations . . . were unreasonable and arbitrary and far in excess of the costs involved in said towing and storage" and that the "demanding and compelling of towing and storage charges against the will of the owner . . . of the vehicle was . . . based upon coercion, duress and illegality." In a section entitled "Ancillary Rights," David alleged, in addition to violating the United States Constitution, the City violated the California Vehicle Code and the state constitution. He also alleged in that section that "the moneys had and received by the City illegally, must be refunded. . . ." The district court granted summary judgment in the City's favor.

The Ninth Circuit Court of Appeal reversed the district court and held that David's due process rights were violated by the delay between his request for a hearing and the hearing. (*David v. City of Los Angeles* (2002) 307 F.3d 1143.) The United States Supreme Court reversed the Ninth Circuit Court of Appeal's judgment and held that the delay in holding the hearing did not violate the federal due process clause. (*City of Los Angeles v. David* (2003) 538 U.S. 715 (*David*).)

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[1] In his opening brief, David states a written decision was mailed to him.

David files this state court action.

While his federal court action was pending, David filed, on July 16, 2002, this state court action, which he styled as a class action brought on behalf of similarly situated persons who have had their vehicles towed within the four years of the filing of the complaint and who have been denied their statutory, common law or constitutional rights. According to the parties' demurrer papers, the City demurred to David's original complaint, but David filed a first amended complaint before the hearing on the demurrer. The City demurred to the first amended complaint, and the trial court sustained the demurrer to all causes of action and granted David leave to amend.[2]

David filed his second amended complaint in which he alleged, among other things, that his state due process rights were violated by the failure to grant him a prompt and speedy hearing, by the denial of his right of confrontation and cross-examination, by the use of secret evidence and coercion, by the City's employment of biased hearing officials, and by the placement of the burden of proof on him. David also alleged the hearing officers were either salaried full-time employees or part-time employees paid on a case basis by the hour, and therefore not neutral or impartial; that they improperly believed the burden of proof rests with the vehicle owner; they were not "indoctrinated as to what rules to apply;" and they accepted hearsay police reports as sole evidence.

Based on these allegations, David asserted the following 10 causes of action: (1) injunctive relief and ancillary relief based on the California Constitution brought under *Katzberg v. Regents of University of California* (2002) 29 Cal.4th 300 (*Katzberg*); (2) violation of state constitutional rights—declaratory judgment brought under *Katzberg*; (3) mandate under Code of Civil Procedure section 1085; (4) administrative mandate under

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[2] The original complaint, demurrer, first amended complaint, and demurrer to the first amended complaint are not a part of Appellant's Appendix. But the City's reply to David's opposition to the City's demurrer states that David's original complaint contained five causes of action and the first amended complaint contained seven causes of action.

Code of Civil Procedure section 1094.5; (5) common count for money had and received; (6) coercion; (7) action by taxpayer; (8) action by concerned citizen; (9) violation of court judgments; and (10) excessive charges. In the first cause of action, David also sought "ancillary relief so that the monies he has expended to retrieve his vehicle, withheld unlawfully from him, may be returned to him." With respect to the first through ninth causes of action, David prayed for, among other things, injunctive relief, a declaratory judgment, "such compensatory damages as may be ancillary to the injunctive and mandate relief sought, money paid to redeem the car, prejudgment interest, and attorney fees and costs. With respect to the tenth cause of action, David sought recovery of the towing and storage charges, attorney fees, costs, and interest. David named as defendants the City of Los Angeles, the Head of the Department of Transportation of the City of Los Angeles, and the Chief of Police of the City of Los Angeles.

The City demurred to the second amended complaint on the grounds, among others, that under the Tort Claims Act (the Act), which requires claims for money or damages against a public entity to be presented to the public entity as a prerequisite to filing an action, the causes of action were time-barred, and that David failed to allege facts showing he is entitled to equitable relief. The trial court sustained the demurrer to all causes of action without leave to amend. The trial court issued an order of dismissal, and this timely appeal followed.

DISCUSSION

The standard of review is de novo.

"In reviewing the sufficiency of a complaint against a general demurrer, we are guided by long-settled rules. 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether

the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

The declaratory and injunctive relief causes of action were properly dismissed.

Based on his allegation he was denied his state due process rights, David requests declaratory and injunctive relief. Notwithstanding the arguments the parties made under the Act (discussed *post*), David has not shown he was denied due process, and, in the absence of such a showing, he cannot establish he was prejudiced by the dismissal of his declaratory and injunctive relief causes of action. (Cal. Const., art. VI, § 13.)

The United States Supreme Court in *David, supra,* 538 U.S. 715, considered David's federal due process claim under the test articulated in *Mathews v. Eldridge* (1976) 424 U.S. 319, 335. That test requires consideration of what process is due based on the private interest affected by the official action; the risk of an erroneous deprivation of the private interest through the procedures used; the probable value, if any, of additional or substitute procedural safeguards; and the government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedural requirements would entail. Under that test, the Supreme Court concluded that David's interest was monetary; the 27-day delay was unlikely to create significant factual errors; and the delay was an administrative necessity. It said that David's interest consists of "maintaining the use of money between (a) the time of paying the impoundment and towing fees and (b) the time of the hearing." (*David,* at p. 717.) The court thus held that "the 27-day delay in holding a hearing here reflects no more than a routine delay substantially required by administrative needs. Our cases make clear that the Due Process Clause does not prohibit an agency from imposing this kind of

procedural delay when holding hearings to consider claims of the kind here at issue." (*David, supra,* 538 U.S. at p. 719.)

David has not shown that the result or the process due him under the California Constitution would be any different. (See *Clark v. Superior Court (County of Orange)* (1998) 62 Cal.App.4th 576, 590-591; *Sandrini Brothers v. Voss* (1992) 7 Cal.App.4th 1398, 1405 [noting that the due process clauses under the federal and state constitutions have been considered to be co-extensive and to have the same scope and purpose]; *Alexander D. v. State Bd. of Dental Examiners* (1991) 231 Cal.App.3d 92, 97-98 [determining whether state due process rights have been violated requires consideration of four factors: "(1) the private interest affected; (2) the risk of erroneous deprivation of such interest through the procedure used, and the value of substitute procedures; (3) the dignitary interest in informing the individual of the nature, grounds and consequences of the action and enabling him or her to answer to a responsible governmental official; and (4) the governmental interest, including the function involved and additional fiscal or administrative burdens"].)

Nor do David's class allegations show he might be entitled to any injunctive or declaratory relief based on a denial of due process. David alleges the class is composed of similarly situated individuals who have had their vehicles towed. The class David therefore represents are those persons who had their cars towed, paid the redemption fee, had their vehicle returned, and had to wait longer than 48 hours for a hearing. David's and the class's interest is purely monetary and therefore do not involve a due process violation. He is not in the same position as persons who have had their vehicles towed, are unable to pay the towing and storage charges, and have to wait longer than 48 hours to have a hearing—and therefore may have a denial of due process claim. In contrast to David, such persons' interests may not be merely monetary.

David's causes of action that seek only money or damages were properly dismissed.

The City demurred to all of David's causes of actions on the ground they are subject to the Act because they seek money or damages from a public entity. (Govt. Code, § 905 et seq.) The City argues that David had to file his action within the two-year limitations period provided by Government Code section 945.6, subdivision (a)(2), but that he did not do so.[3] We agree that David's failure to comply with the Act precludes his fifth, sixth, and tenth causes of action.

The claims presentation requirements apply to claims against public entities that seek "money or damages." (Govt. Code, § 905; see generally *Minsky v. City of Los Angeles* (1974) 11 Cal.3d 113, 117.) To avoid a demurrer on the ground that a plaintiff failed to comply with the claims presentation requirements, a plaintiff must affirmatively allege compliance with the Act. (*C.A. Magistretti Co. v. Merced Irrigation Dist.* (1972) 27 Cal.App.3d 270.) "If a plaintiff relies on more than one theory of recovery against the State, each cause of action must have been reflected in a timely claim . . . [and] the factual circumstances set forth in the written claim must correspond with the facts . . . in the complaint; . . ." (*Nelson v. State of California* (1982) 139 Cal.App.3d 72, 79.) If a cause of action is not reflected in a timely claim, it is subject to dismissal. (*Id.*; see also *Fall River Joint Unified School Dist. v. Superior Court* (1988) 206 Cal.App.3d 431.)

By his fifth, sixth, and tenth causes of action, David seeks only a return of the $134.50 he paid to redeem his car. Because these are claims solely for money or damages, David had to comply with the claims presentation statutes. (*Madera Community Hospital v. County of Madera* (1984) 155 Cal.App.3d 136, 148 [although

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[3] Government Code section 945.6, subdivision (a)(2) provides as follows: "(a) Except as provided in Sections 946.4 and 946.6 and subject to subdivision (b), any suit brought against a public entity on a cause of action for which a claim is required to be presented . . . must be commenced: (2) If written notice is not given in accordance with Section 913, within two years from the accrual of the cause of action. . . ." The City did not give written notice to David in accordance with section 913, and therefore David had two years from the accrual of the cause of action to file the action.

plaintiff did not have to file a claim in connection with its request for writ of mandate, the failure to file a claim "was fatal as to any monetary reimbursement sought"]; *Tapia v. County of San Bernardino* (1994) 29 Cal.App.4th 375, 383 ["Where a petition for writ of mandate may seek either monetary damages or other extraordinary relief, failure to file a claim is fatal to the recovery of money damages"].) Here, David merely alleged he filed a claim in October 1998. He did not attach the claim to his complaint or otherwise allege the contents of the claim. We therefore cannot ascertain whether the causes of action alleged in his state court action were properly reflected in the claim. (*Nelson v. State of California, supra,* 139 Cal.App.3d at p. 79; *Fall River Joint Unified School Dist. v. Superior Court, supra,* 206 Cal.App.3d 431.)

Even assuming David's causes of action were reflected in the claim he filed, the causes of action are time-barred. David's car was towed on August 13, 1998 and the posttow hearing was held on September 9, 1998. He then filed a claim with the city clerk's office on October 13 or 22, 1998, and the claim was denied on January 12, 1999. But it was not until more than two years later, in 2002, that David filed this action containing untimely causes of action.

The time in which David had to bring those causes of action for money or damages is not tolled under either Title 28 United States Code section 1367 (section 1367) or equitable tolling principles. Section 1367 provides that "[t]he period of limitations for any claim asserted under subsection (a) [conferring supplemental jurisdiction over state claims related to federal claims] . . . shall be tolled while the claim is pending [in federal court] and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period."[4] In his federal complaint, David only alleged

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[4] Section 1367 provides: "**(a)** [T]he district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. . . . [¶] . . . [¶] **(c)** The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if— [¶] **(1)** the claim raises a novel or complex issue of State law, [¶] **(2)** the claim substantially

two counts. The first was under Title 42 United States Code section 1983 (civil rights violation). The second count alleged that the towing and storage charges were unreasonable and arbitrary and that under a federal case, *Stypmann v. City and County of San Francisco* (9th Cir. 1977) 557 F.2d 1338, the charges were exacted without due process hearing rights. David also alleged in a separate section entitled "Ancillary Rights" that the City violated the California Vehicle Code and state constitution, and therefore David requested the court to "take ancillary jurisdiction of the state causes of action as set forth herein as well." He then alleged that the "moneys had and received by the City illegally, must be refunded. . . ."

These allegations do not support David's claim that the federal court exercised supplemental jurisdiction over the causes of action alleged in his state complaint. Section 1367 applies to "claims" that are pleaded on the face of the federal complaint. For example, in *Pinkley, Inc. v. City of Frederick, Maryland* (4th Cir. 1999) 191 F.3d 394, the federal court of appeal held that the district court abused its discretion by deeming a Title 42 section 1983 unlawful seizure complaint to include an unpleaded state-law conversion claim. Here, David's first federal count was brought under federal law, and the second count, although ambiguous, also appears to have been brought under federal law, as it cites *Stypmann*, *supra,* 557 F.2d 1338, a case concerning federal due process. Nor do David's allegations under his "Ancillary Rights" section in his federal complaint show that he was raising supplemental or pendent state claims. Whether or not David intended to raise pendent state law claims, he did not expressly allege a count or claim arising

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predominates over the claim or claims over which the district court has original jurisdiction, [¶] **(3)** the district court has dismissed all claims over which it has original jurisdiction, or [¶] **(4)** in exceptional circumstances, there are other compelling reasons for declining jurisdiction. [¶] **(d)** The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period."

from state law or otherwise identify a state law claim. The City therefore had no notice that David was alleging a state law claim. Thus, section 1367 has no application to David's state action because David did not allege state law claims in his federal action.

In addition, the limitations period in which David had to bring his action is not equitably tolled. The doctrine of equitable tolling requires timely notice, a lack of prejudice to the defendant, and reasonable and good faith conduct on plaintiff's part. (*Addison v. State of California* (1978) 21 Cal.3d 313, 319 (*Addison*).) In *Addison*, the plaintiff filed a federal action in which he also timely alleged state law claims. The federal court dismissed the action without prejudice to filing a state court action. Plaintiff refiled the action in state court after the applicable limitations period had expired. The court held that the equitable tolling doctrine applied because the federal action and state action were based on the same facts; there was no prejudice to defendants as the state action was filed within one week of the dismissal of the federal action; the state claims were raised in the federal action; and the claim rejection letter plaintiff received only informed them that they were required to file an action, rather than an action in *state* court.

David cannot show that he satisfied the element of timely notice required under *Addison, supra,* 21 Cal.3d 313, to establish equitable tolling. In contrast to *Addison,* David did not allege state claims in his federal action. Four years elapsed between the time David's car was towed and the filing of his state action, during which time the City lacked timely notice that David might raise state law claims. David therefore is not entitled to an equitable tolling of the limitations period.

David does not state facts sufficient to state an action for traditional mandamus.

David seeks a writ of mandate "to enjoin the City [ ] to comply with the law" as set forth in his complaint. The City argues that David has not stated facts sufficient to constitute the cause of action. We agree.

"A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, . . . " (Code Civ. Proc., § 1085, subd. (a).) Traditional mandamus is available to compel the performance of a ministerial act, i.e., one that does not require the exercise of judgment and discretion. (*Jenkins v. Knight* (1956) 46 Cal.2d 220, 223.) "It is frequently stated that the discretion conferred upon administrative boards cannot be controlled by *mandamus,* except to prevent an abuse thereof. [Citation.] This rule applies only where a true discretion has been conferred by the statute. A proper illustration of this rule would be, where an administrative board is given power, if certain facts are found to exist, to take certain action, the statute providing directly or indirectly that the board is given discretion as to whether it will act after the facts have been ascertained, and providing that the board's determination shall be final. In such a case the determination as to whether the board will act is purely administrative, and its discretion cannot be controlled by *mandamus.* [Citations.] [¶] [I]t is equally well settled that where a statute requires an officer to do a prescribed act upon a prescribed contingency, his functions are ministerial, and upon the happening of the contingency the writ may be issued to control his action." (*Drummey v. State Bd. of Funeral Directors* (1939) 13 Cal.2d 75, 83.) When review necessitates looking into the administrative record, the action is one under Code of Civil Procedure section 1094.5, not section 1085. (*Professional Engineers In Cal. Government v. State Personnel Bd.* (1980) 114 Cal.App.3d 101, 111.)

Here, David alleges he was denied his right of confrontation and cross-examination, the City used secret evidence, and the burden of proof was improperly placed on him. To evaluate these claims, a review of the administrative record is necessary, and therefore traditional mandamus is improper. (*Professional Engineers In Cal. Government v. State Personnel Bd., supra,* 114 Cal.App.3d at p. 111.)

In addition, David makes the conclusory allegation that the hearing officer was not neutral or impartial under *Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017

(*Haas*). In *Haas*, the Supreme Court held that the "ad hoc procedure" used to select administrative decisionmakers was invalid because it created the appearance of a disqualifying financial interest. (*Id.* at pp. 1020-1021.) But David does not allege facts showing that the City uses an "ad hoc procedure" in selecting its hearing officers that is similar to or the same as that found to be improper in *Haas*. Instead, he merely alleges that the City uses salaried full-time employees or part-time employees paid on case-by-case basis. He also alleges that the hearing officer who presided over his case was a full-time employee of the City, and not an ad hoc employee. It is not improper for the City to use its own employees as hearing officers. (*Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd*. (2002) 99 Cal.App.4th 880, 885-886, ["it has been consistently recognized that the fact that the agency or entity holding the hearing also pays the adjudicator (who is the agency's employee) does not automatically require disqualification"].) Moreover, under California Vehicle Code section 22852, subdivision (c), the City may authorize its own officer or employee to conduct the hearing so long as the hearing officer is not the same person who directed the vehicle's storage. Therefore, David's complaint does not state facts showing a violation of *Haas.*

The fourth cause of action for administrative mandate is time-barred.

A writ of administrative mandate under Code of Civil Procedure section 1094.5 must be filed not later than the 90th day following the date on which the decision becomes final. (Code Civ. Proc., § 1094.6, subd. (b).) David alleges that the hearing was held on September 9, 1998 and that a decision was rendered sometime before October 13 or 22, 1998, as that is the date he filed a claim for damages based on his dissatisfaction with the City's decision. David did not file this action, however, until July 16, 2002, almost four years after the decision was issued in the hearing before the administrative agency. David's cause of action for administrative mandate is therefore time-barred. And, for the same reasons as stated above, the limitations period is not tolled.

David does not state facts showing this is a proper subject of a taxpayer action.

David alleges that he is a taxpayer in the City and County of Los Angeles and, as such, he "seeks to prevent or restrain the illegal expenditure of money by the city in conducting invalid hearings following the towing of a vehicle. . . " under Code of Civil Procedure section 526a (section 526a).[5] The purpose of section 526a is to permit a large body of persons to challenge wasteful government action that otherwise would go unchallenged because of the standing requirement. (*Blair v. Pitchess* (1971) 5 Cal.3d 258, 267-268.) Section 526a confers standing on citizens, for example, to challenge the expenditure of public funds by the police department to conduct undercover intelligence gathering at a public university (*White v. Davis* (1975) 13 Cal.3d 757), and "to restrain illegal expenditure or waste of city funds on *future* enforcement of an unconstitutional ordinance or an impermissible means of enforcement of a facially valid ordinance" (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1086).

Section 526a is inapplicable to the issues David raises in his complaint. There is no wrongful expenditure of public funds alleged in David's complaint. Instead, David alleges that the City conducts posttow hearings in an invalid manner because, among other things, they are not promptly given and they fail to use impartial hearing officers. Thus, the gravamen of David's complaint is not that posttow hearings should be halted because funds are being expended illegally on them. He wants the posttow hearings to continue, but he wants them to continue in accord with due process. Therefore, even if David was granted the relief he seeks in this action, he does not allege that the expenditure of money would change, as posttow hearings would continue.

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[5] Section 526a provides as follows: "An action to obtain a judgment, restraining and preventing any illegal expenditure of . . . funds . . . of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, . . . , who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. . . ."

There is no cause of action for a concerned citizen.

David's complaint cites *Green v. Obledo* (1981) 29 Cal.3d 126, 144, *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 439, and *Shelley v. City of Los Angeles* (Super. Ct. Los Angeles 1997 C639104) as support for his "action by concerned citizen." Those cases merely recognize that although the writ of mandate ordinarily will be issued only to persons who are "beneficially interested" (Code Civ. Proc., § 1086), the exception to the general rule is " 'where the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the relator need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced.' " (*Green v. Obledo, supra,* 29 Cal.3d at p. 144 [cited with approval by *Common Cause v. Board of Supervisors, supra,* at p. 439, and *Shelley v. City of Los Angeles, supra*].) Therefore, this cause of action is duplicative of the writ of traditional mandamus cause of action, discussed above.

David's ninth cause of action for violation of court judgments was properly dismissed.

David alleges that the City entered into stipulated court judgments and decrees in other cases (*Goichman v. City of Los Angeles* (C.D.Cal. 1983) No. CV81-5389 LEW and *Shelley v. City of Los Angeles* (Super. Ct. Los Angeles 1999 No. C639104)) for the "benefit of the motoring public," and that David is a third party beneficiary of those judgments. The trial court properly dismissed this cause of action. David is not a party to those other actions. A matter relating to a violation of another court judgment or decree must be raised in that case. It is not a proper subject of this action.

DISPOSITION

The judgment is affirmed. Respondent shall recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MOSK, J.

I concur:

GRIGNON, J.

TURNER, P.J., CONCURRING.

I concur in my colleagues' analysis except in the following narrow respect. I believe title 28 United States Code section 1367(a) and (d)[1] applies to plaintiff's state law claims asserted in the federal lawsuit. In federal court, plaintiff, utilizing the term "ancillary claims" specifically alleged defendant, the City of Los Angeles, was violating Vehicle Code section 22650[2] and 22852[3] and in addition to

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1 Title 28 United States Code section 1367(a) and (d) states in relevant part: "(a) [I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties. [¶] . . . (d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period."

2 Vehicle Code section 22650 states in its entirety: "It is unlawful for any peace officer or any unauthorized person to remove any unattended vehicle from a highway to a garage or to any other place, except as provided in this code. [¶] (a) Those law enforcement and other agencies identified in this chapter as having the authority to remove vehicles shall also have the authority to provide hearings in compliance with the provisions of Section 22852. During these hearings the storing agency shall have the burden of establishing the authority for, and the validity of, the removal. [¶] (b) Nothing in this section shall be deemed to prevent a review or other action as may be permitted by the laws of this state by a court of competent jurisdiction."

3 Vehicle Code section 22852, subdivisions (a) through (c) state: "(a) Whenever an authorized member of a public agency directs the storage of a vehicle, as permitted by this chapter, or upon the storage of any vehicle as permitted herein (except as provided in subdivision (f) or (g)), the agency or person directing the storage shall provide the vehicle's registered and legal owners of record, or their agents, with the opportunity for a poststorage hearing to determine the validity of the storage. [¶] (b) A notice of the storage shall be mailed or personally delivered to the registered and legal owners within 48 hours, excluding weekends and holidays, and shall include all of the following

state constitutional violations. No doubt, plaintiff's state law allegations were not "ancillary claims." Ancillary claims are not those asserted by a federal court plaintiff. (*Peacock v. Thomas* (1996) 516 U.S. 349, 355 '"[A]ncillary jurisdiction typically involves claims by a defending party haled into court against his will, or by another person whose rights might be irretrievably lost unless he could assert them in an ongoing action in a federal court'"]; *New Rock Asset Partners, L.P. v. Preferred Entity Advancements* (3d Cir. 1996) 101 F.3d 1492, 1505, fn. 7 ["Ancillary claims are generally claims other than those of the plaintiff, such as compulsory counterclaims"].) Rather, the correct technical label for plaintiff's state law allegations in the federal action were pendant claims. (*Bank of Oklahoma, N.A .v. Islands Marina, Ltd.* (10th Cir. 1990) 918 F.2d 1476, 1480, fn. 6, bold emphasis deleted ["pendent claims are generally those brought by the original plaintiff, while ancillary claims are asserted by a defendant against a plaintiff or codefendant"]; *Nanavati v. Burdette Tomlin Memorial Hospital* (3d Cir. 1988) 857 F.2d 96, 104 ["pendent claims supplement plaintiff's claims, ancillary claims, supplement counterclaims and cross claims"].) But for purposes of title 28 United States Code section 1367(d), the labels used to described plaintiff's federal cause of action are irrelevant. (*Fellows v. National Enquirer, Inc.* (1986) 42 Cal.3d 234, 240; *Reader's Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 265.) Title 28 United States Code section 1367(d) preserves both ancillary and pendent state law claims from a state's statute of limitations. (*City of Chicago v. International College of Surgeons* (1997) 522 U.S. 156, 165 ["Congress has codified those principles in the supplemental jurisdiction statute, which combines the doctrines of pendent and ancillary jurisdiction under a

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information: [¶] (1) The name, address, and telephone number of the agency providing the notice. [¶] (2) The location of the place of storage and description of the vehicle, which shall include, if available, the name or make, the manufacturer, the license plate number, and the mileage. [¶] (3) The authority and purpose for the removal of the vehicle."

common heading"]; *New Rock Asset Partners, L.P. v. Preferred Entity Advancements*, *supra*, 101 F.3d at p. 1505 ["Section 1367 codifies the doctrines of both pendent and ancillary jurisdiction under the name 'supplemental jurisdiction"'].) Simply stated, plaintiff's claims for violations of state statutory and constitutional law asserted in the federal lawsuit were supplemental claims and he is entitled to the benefit of title 28 United States Code section 1367(d).

That being said, the demurrer was still properly sustained when the correct test for reviewing complaints seeking relief against a public entity is applied. (*Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 792-793; *Gates v. Superior Court* (1995) 32 Cal.App.4th 481, 493.) All of plaintiff's due process claims are without merit for the reasons explained by my colleagues. All of plaintiff's monetary relief claims are barred by the failure to allege specific facts showing a proper claim was filed. (*State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1239-1245 [claim pleading requirement]; *Lopez v. Southern Cal. Rapid Transit Dist.*, *supra*, 40 Cal.3d at p. 795 [particularity pleading requirement].) Finally, all of plaintiff's injunctive relief claims are premised on alleged violations of the California due process clause. But as my colleagues have aptly explained, the delay in holding the hearing did not violate plaintiffs' due process rights. The due process result probably would be different had plaintiff and the other proposed class members been unable to pay the fee to secure release of their cars. But that is not what happened here. With this narrow caveat, I join in my colleagues' analysis.

TURNER, P.J.